IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Babu Lal vs. Murari Lal and Ors.

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S.B. Civil First Appeal No.56/1989 under Section 96 read with Order 41 Rules 1 and 2 C.P.C. against the judgment and decree dated 27.04.1989 passed by Shri Budhmal Bhojak RHJS, District Judge, Dholpur in Civil Suit No.11/1980 decreeing the suit of the plaintiff respondent for Rs.34,000/-.

Date of Judgment :::::: November 07, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Miss.Kiran Bhalla on behalf of
Mr.J.P.Goyal for appellant.

BY THE COURT (ORAL):-

The facts in brief giving rise to this appeal are that the plaintiff respondents 1 and 2 filed a suit

against the defendant-appellant Babu Lal and Matoli for recovery of Rs.34,000/- with the averments that on 26.8.1977 the defendants entered into an agreement with them for supply of 51 trucks of stone from Gurda Area Mines @ Rs.45.50 per hundred square feet and agreed to supply the stones by 24.3.1978 on the terms and conditions mentioned in the agreement. As per the case of the plaintiff-respondent, the defendants received Rs.25,000/- from the plaintiffs as advance and the rest of the amount was agreed to be paid after the supply of the stones. As per the averments made in the plaint it was agreed between the parties that in case the defendants fail to supply the stones as per the terms and conditions of the agreement, it would carry interest at the rate of 4% on the cost of the material. It was mentioned that when defendants failed to supply any material up to 26.8.1978, the plaintiffs served a notice to the defendants on 11.8.1980 which was replied by the defendants on 18.8.1980. In the reply to the letter, the defendants denied the fact of agreement and receipt of any amount. In such a situation, the plaintiffs have filed the suit for recovery of Rs.25,000/- as principal along with Rs.9,000/- as interest.

In the written statement, the defendant-appellant denied the facts of entering into any agreement and receipt

of any amount as advance. He has also denied his signatures on the agreement. It was mentioned by the defendant appellant that since he was not engaged any mining work, therefore, the question of entering into an agreement for supply of stones does not arise.

After framing issues, recording evidence of the parties and hearing learned counsel for the parties the learned trial court vide judgment dated 27th April, 1989 decreed the suit of the plaintiff-respondents for Rs.34,000/-. Hence, this appeal.

Heard learned counsel for the appellant.

Learned counsel for the appellants has contended that the learned trial court has neither properly appreciated nor critically examined the evidence of the parties and thus, committed error in recording finding in favour of the plaintiff and in decreeing the suit of the plaintiff respondent. In the alternative, learned counsel for the defendant appellant has submitted that in the facts and circumstances of the case the learned trial court has committed error and illegality in awarding interest @ 12% per annum and the same deserves to be reduced.

After hearing learned counsel for the appellant, I have gone through the material and evidence available on record as well as the impugned judgment.

Sofar as issues Nos.1,2 and 3 are concerned, they are related to each other. To prove these issues, plaintiffs examined three witnesses namely; Murari Lal PW.1, Ramji Lal PW.2 and defendant Matoli PW.3. PW.1 Murari Lal has deposed that on 26.8.1977, Babu Lal and Matoli agreed to sell stones to him @ Rs.45.50/- per hundred sq. feet for which they took an amount of Rs.25,000/- as advance for which Ex.1 was written at the shop of Ramji Lal which is in the handwriting of Ramji Lal, which bears signature of Babu Lal from “A” to “B” and signature of Matoli from “C” to “D”. Babu Lal and Matoli signed the document in his presence. PW.2 Ramji Lal is scribe of the agreement Ex.1. This witness has deposed that document Ex.1 was written on the request of defendants as per their instructions. The witness deposed further that the document was in his handwriting and bears his signatures from “J” to “K”. Babu Lal and Matoli signed the document in his presence. Witnesses Ram Charan and Jogendra Singh also signed the document in his presence. The witness has categorically deposed that plaintiff Murari Lal paid Rs.25,000/- as advance in his presence before signing the document and the

defendant signed the document only after accepting the money. PW.3 Matoli Ram, defendant No.2 has appeared as plaintiff witness. In his statement this witness has admitted the agreement between plaintiff Murari Lal and defendant Babu Lal and himself. He has also admitted receipt of Rs.25,000/- as advance. Thus, from the evidence of the plaintiffs it is clear that they has been able to prove the agreement between the parties for supply of stones and payment of Rs.25,000/- as advance.

As against this, the defendant Babu Lal has denied execution of the agreement. He also denied his signatures on the agreement Ex.1. Not only this, he has denied his signature on the Vakalatnama and also on the written statement. Thus, his evidence cannot be treated as trustworthy.

A bare perusal of the impugned judgment would reveal that the learned trial judge has compared the signatures of defendant Babu Lal on the agreement Ex.1 from the signatures put on the vakalatnama and on the written statement. After comparing the signatures, the learned trial judge has observed that in his opinion the signatures on the agreement Ex.1 match with the signatures on the vakalatnama and written statement. I have also gone through

these documents and have compared the signatures on these three documents and I am also of the opinion that the signature on these three documents are of one person.

From the discussions above, I am of the opinion that the learned trial court has committed no error in deciding issue Nos.1 to 3 in favour of the plaintiffs and against the defendant-appellant and thus, no interference is required to be called for.

As regards awarding of interest @ 12% on the advance amount suffice it to say that as the amount advanced to the defendant appellant pertains to a commercial transaction, awarding of interest @ 12% per annum cannot be said to be excessive and no interference is required to be called for in the same.

No other point has been raised.

For the discussions above, the first appeal fails and is, hereby dismissed with no orders as to costs.

(K.C.Sharma),J.

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